IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.782 OF 2001

Sou.Skhakuntalabai V. Guayabad ...Appellant

Vs.

Onkarnath R. Balpure & Anr. ...Respondents

Mr.A.A.Kumbhakoni for the Appellant
Mr.C.G.Gavanekar for Respondent No.1
Mr.Nitin Jamdar for Respondent No.3

CORAM: A.S.OKA,J.
DATE : MARCH 3,2005.

P.C.:

1. Heard Counsel appearing for the Appellant and Counsel for Respondent No.1 and Respondent No.2.

2. The Appeal is filed by the original Defendant No.1 for challenging the decree for possession passed by the trial Court in favour of the Respondent No.1. It is not in dispute that the original Plaintiff-Respondent No.1 filed a suit for declaration of his title to which the Appellant was not a party. The said suit was decreed. Thereafter, a suit was filed by the Appellant-Defendant No.1 for challenging the decree of declaration passed in favour of the original Plaintiff. The said suit has been dismissed on merits. Thus, it is obvious that so far as question of title is concerned, the same has attained finality in favour of the Respondent No.1.

3. The present suit by the Respondent No.1 was sought to be defended by the Appellant by raising a plea of adverse possession. However, the courts below have found that the Appellant has miserably failed to prove that his possession was hostile to that of true owners. In the circumstances, there is no merit in the Second Appeal and the same is dismissed with no order as to costs.

4. Shri Gavanekar, learned Counsel for the Respondent No.1 on instructions states that the Respondent No.1 has filed an application dated 9th February 2005 in this Court out of desperation and he is unconditionally withdrawing the said application. Hence, the said Application which is on record of the Second Appeal stands dismissed. He also states that the complaint which is filed by the Respondent No.1 against the Advocate for the Appellant to the Bar Council of Maharashtra and Goa will be unconditionally withdrawn. The said statement on instructions of the Respondent No.1 made by Shri Gavanekar is accepted.

5. Parties to act upon an authenticated copy of this order.

6. Certified copy is expedited.

JUDGE.